



UNITED NATIONS
NATIONS UNIES

**Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda**

115/H

Q

ICTR-00-55b-A

05th May 2011

{115/H – 113/H}

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mehmet Güney
Judge Andréia Vaz
Judge Theodor Meron
Judge Carmel Agius

ICTR Appeals Chamber
Date: *05th May 2011*
Action: *R. Juma*
Copied To: *Concerned Parties,*
SLE, L&S, ALQ, P&C

Registrar: Mr. Adama Dieng

Decision of: 5 May 2011

CMS, L&S
Fauquier
3, 23

ILDEPHONSE HATEGEKIMANA

v.

THE PROSECUTOR

Case No. ICTR-00-55B-A

**DECISION ON ILDEPHONSE HATEGEKIMANA'S MOTION FOR COOPERATION
AND JUDICIAL ASSISTANCE**

Counsel for Ildephonse Hategekimana:

Mr. Jean de Dieu Momo

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. James J. Arguin
Mr. Alphonse Van
Mr. Alfred Orono
Ms. Amina Justine Buruma
Mr. Leo Nwoye

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**
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NAME/NOM: *SLE, L&S, ALQ, P&C* A: *AFANDE*
SIGNATURE: *[Signature]* DATE: *15 May 2011*

1. The Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994 (“Appeals Chamber” and “Tribunal”, respectively) is seised of a motion filed confidentially on 28 February 2011 by Mr. Ildephonse Hategekimana requesting cooperation and judicial assistance from Belgium and Canada.¹ The Prosecution did not file a response.

2. On 6 December 2010, Trial Chamber II of the Tribunal convicted Mr. Hategekimana of genocide and murder and rape as crimes against humanity and sentenced him to imprisonment for the remainder of his life.² The written Trial Judgement was filed in English on 14 February 2011 and was made available in French on 12 April 2011. On 16 March 2011, Mr. Hategekimana filed his Notice of Appeal.³ His Appellant’s brief is due by 30 May 2011.

3. Mr. Hategekimana requests that the Appeals Chamber order Belgium and Canada to facilitate his access to the prior statements and testimony of certain Prosecution witnesses from his trial who appeared before domestic courts in 2001 in Belgium and in 2007 in Canada.⁴ Mr. Hategekimana submits that: (i) the requested documents are sufficiently identified;⁵ (ii) they are relevant and concern sites and facts underpinning his convictions;⁶ and (iii) he has exhausted all procedural steps to obtain the assistance from the States concerned.⁷

4. The Appeals Chamber recalls that an appeal is not a trial *de novo* and thus cannot be viewed as an opportunity to remedy any “failures or oversights” by a party during the pre-trial and trial phases.⁸ As a general rule, investigations should be carried out during the pre-trial and trial stages.⁹

¹ *Requête en extrême urgence aux fins de coopération et d’entraide judiciaire en vertu de l’article 28 du Statut, 54 et 108bis du Règlement*, with annexes, 28 February 2011 (confidential) (“Motion”).

² T. 6 December 2010 p. 12. *See also The Prosecutor v. Ildephonse Hategekimana*, Case No. ICTR-00-55B-T, Judgement and Sentence, dated 6 December 2010 and filed on 14 February 2011 (“Trial Judgement”), paras. 697, 721, 729, 730, 748.

³ *Acte d’appel du Lieutenant Ildephonse Hategekimana contre le Jugement rendu le 6 décembre 2010 par la Chambre de première instance II du Tribunal pénal international pour le Rwanda(TPIR)*, 16 March 2011.

⁴ Motion, pp. 4, 5.

⁵ Motion, paras. 13-15.

⁶ Motion, paras. 16 (*referring to* Trial Judgement, para. 306), 17 (*referring to* Trial Judgement, paras. 634, 637). *See also* Motion, para. 18.

⁷ Motion, paras. 19, 20. Mr. Hategekimana submits that, on 22 December 2010, he seised the Registry of two requests for cooperation and judicial assistance from Belgium and Canada. On the same day, the Registry sent a *note verbale* to the two concerned States soliciting their assistance. Both States indicated that they were unable to comply with Mr. Hategekimana’s request. *See* Motion, paras. 1-6 and annexes.

⁸ *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Hassan Ngeze’s Motions for Approval of Further Investigations on Specific Information Relating to the Additional Evidence of Potential Witnesses, 20 June 2006 (“*Nahimana et al.* Decision of 20 June 2006”), para. 4; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Jean-Bosco Barayagwiza’s Extremely Urgent Motion for Leave to Appoint an Investigator, 4 October 2005 (“*Nahimana et al.* Decision of 4 October 2005”), p. 3.

⁹ *Nahimana et al.* Decision of 20 June 2006, para. 4; *Nahimana et al.* Decision of 4 October 2005, p. 4.

However, the Appeals Chamber may, in exceptional circumstances, facilitate investigations at the appeal stage if the moving party demonstrates, for instance, “that it is in possession of specific information that needs to be further investigated in order to avoid a miscarriage of justice [...] and that this specific information was not available at trial and could not have been discovered at trial even through the exercise of due diligence”.¹⁰

5. The Appeals Chamber observes that the material sought by Mr. Hategekimana relates to domestic proceedings that took place in 2001 and 2007 and thus could have been obtained prior to the commencement of his trial on 16 March 2009.¹¹ Moreover, Mr. Hategekimana fails to provide any reason why he could not have discovered this material earlier in the exercise of due diligence. In addition, apart from general submissions concerning the relationship between his case and the domestic proceedings in Belgium and Canada,¹² Mr. Hategekimana has not shown that the failure to obtain the material has the potential to result in a miscarriage of justice. Accordingly, the Appeals Chamber is not satisfied that Mr. Hategekimana has demonstrated the exceptional circumstances necessary to justify the intervention of the Appeals Chamber for investigative assistance at the appeal stage.

6. For the foregoing reasons, the Appeals Chamber **DENIES** the Motion.

Done in English and French, the English version being authoritative.

Done this 5th day of May 2011,
at The Hague,
The Netherlands.



[Seal of the Tribunal]

Judge Fausto Pocar
Presiding

¹⁰ *Nahimana et al.* Decision of 4 October 2005, p. 4, quoting *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Ferdinand Nahimana’s Motion for Assistance from the Registrar in the Appeals Phase, 3 May 2005, para. 3; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Hassan Ngeze’s Motion for the Approval of the Investigation at the Appeal Stage, 3 May 2005, pp. 3, 4. See also *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Ferdinand Nahimana’s Motions for Disclosure of Material in the Prosecutor’s Possession Necessary for the Appellant’s Defence and for Registry’s Assistance to Conduct Further Investigations at the Appeal Stage, 8 December 2006, para. 23 (the English version of the French original was filed on 2 March 2009); *Nahimana et al.* Decision of 20 June 2006, n. 6.

¹¹ See Trial Judgement, Annex A, para. 15.

¹² The Appeals Chamber notes that Mr. Hategekimana merely refers to paragraphs 306, 634, and 637 of the Trial Judgement without elaborating further on how the requested documents are relevant to his convictions. See Motion, paras. 16, 17.